IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3309 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMLESHBHAI B MEHTA

Versus

REGISTRAR, HIGH COURT OF GUJ.

Appearance:

1. Special Civil Application No. 3309 of 1999

MR.NIRUPAM NANAVATY, SENIOR ADVOCATE with
MR.D.D.VAIDHYA, ADVOCATE for the petitioner-delinquent

MR.S.N.SHELAT, ADVOCATE GENERAL WITH MR.J.B.PARDIWALA,
ADVOCATE for the Respondent No.1

MR.R.C.KODEKAR, AGP for the Respondent No.2

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

and

HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 03/09/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI for the Court)

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1. The petitioner, a former Civil Judge (S.D.), has challenged the order of his compulsory retirement by the State Government on the recommendation of the High Court made on 23rd December 1982 pursuant to the departmental inquiry held against the petitioner in which he was found guilty of the charges of dereliction of duty in making an order dated 30th October 1982 on an application made under Section 457 of the Criminal Procedure Code for returning the muddamal - oil barrels to the complaint. The petitioner had also challenged the validity of the Resolution No.3 passed at the Chamber Meeting held on 26-12-1988 on the ground that it was ultra vires the provisions of Article 235 of the Constitution of India. Under the said Resolution, it is provided that, on the report of the disciplinary committee comprising of the Hon'ble Judges of the Court, along with the entire record of the inquiry, including the written submissions of the delinquent in response to the show cause notice for the proposed punishment, being laid for 48 hours on the table before the High Court, it would become the decision of the High Court. At the outset of the hearing, the learned Senior Advocate appearing for the petitioner stated that the petitioner did not press for the challenge against the provisions of the said Resolution No.3 of the Rules of Business of the High Court and the prayers made in Clauses 36(A) and and 36(G), challenging the said Resolution, were expressly given up at the

instance of the petitioner. All the averments made in that context made in the petition were also expressly given up.

Brief facts :

2. The petitioner came to be appointed as Civil Judge (J.D.) & Judicial Magistrate First Class on probation for a period of two years by order dated 10-12-1981 and was posted at Jamnagar. A Criminal Misc. Application No.97 of 1982 came to be filed on 19-10-1982 in the Court of the Judicial Magistrate First Class, at Jamnagar, by the Manager of a Trust named Ramdev Oil Mill, of Jamnagar against the three accused persons, who were the officers of the Civil Supplies Department, for the offences under Sections 390, 391, 166 read with Sections 34 and 114 of the Indian Penal Code on an allegation that, on the night between 30-9-1982 and 1-10-1982, at about 12.30 a.m., the accused No.1 alongwith his persons had, under the guise of search and seizure, keeping police with him and without a warrant, given threats and created a spurious search and seizure order. It was stated in paragraph 3 of the complaint, which is in the vernacular, that the Trust had filed Regular Civil Suit No.863 of 1982 on 1-10-1982 against the search and seizure order made by the accused No.1 on 1-10-1982 in which the Court had granted injunction in the terms which were reproduced in the said paragraph. As per the said order of injunction issued by the Civil Court, the accused No.1 and his agents and servants were restrained from implementing the seizure order dated 1-10-1982 and were also required not to treat the stock of goods as seized and were restrained from preventing the plaintiff from dealing with the goods or selling them. It was then alleged in paragraph 4 of the complaint that the accused persons were in the know of the said order of interim injunction dated 1-10-1982 (in fact, it was dated 4-10-1982), passed by the Civil Judge (S.D.) as they were issued the notice of that order. It was further stated in paragraph 5 of the complaint that the accused persons, in violation of the order of the Court, which was known to them and ignoring the law, with a view to harass the trustees and cause them malicious harm, and though they had no reasonable ground, authority or power, committed robbery of 45 barrels of oil while they were being carried in a truck, in furtherance of their common intention and by abetting each other, giving threats at the point of a revolver, and that these accused were pilfering oil from the barrels and appropriating the same to their personal use. They had threatened the driver of the truck by pointing a pistol

at him, saying that he would be put in jail. All these accused had thereby committed offences under Sections 390 (robbery), 391 (dacoity), 166 (public servant disobeying law, with intention to cause injury to any person), read with sections 34 and 114 of the Indian Penal Code. It was prayed in the complaint that they should be proceeded with in accordance with law and directed to produce the 45 barrels of oil as it would decay, and also to produce the truck which would be damaged if it lies idle. A prayer was sought that an investigation may be directed under Section 156(3) of the Code of Criminal Procedure.

2.1 On this application, an order was made on 19-10-1982 by Mr.R.G.Chaudhary, Civil Judge (J.D.) & Judicial Magistrate First Class, who was presiding over the Court No.3, directing the Police Sub-Inspector under Section 156(3) of the Code to investigate the offences alleged in the complaint, and submit a report on or before 10-11-1982. The said case was registered as City/M/76/1982.

2.2 According to the petitioner, on 26-10-1982, Mr.H.M.Prajapati who was in charge of the Court No.3, Civil Judge (J.D.) & J.M.F.C., on an application exh.5 given under Section 457 of the Code, in the said private complaint praying for the return of the muddamal - 45 barrels of groundnut oil, directed the police to submit its report. Accordingly, a report was submitted on 30-10-1982 by the P.S.I. Shri Jhala. It was the petitioner's case that, on 30-10-1982, he had heard the advocate for the complainant and also perused the report submitted by the police and passed an order to the effect that the muddamal articles be returned to the complainant on the complainant's furnishing security for a sum of Rs.1 lac and on giving an undertaking to the Court to produce the muddamal goods as and when required. It is stated in paragraph 12 of the petition that the said order made by the petitioner was not carried out, with the result that an application for contempt was filed on December 10, 1982 by the complainant when Mr.S.B.Mehta, J.M.F.C. was in charge of the Court. It appears from the record that, on 4-11-1982, a letter was written by the Judicial Magistrate First Class, Court No.3 Mr.S.B.Mehta requiring compliance of the said order dated 30-10-1982. The accused No.1 had made an endorsement below that communication on 4-11-1982, inter alia, stating that the matter was to be proceeded with under Section 6A of the Essential Commodities Act and the proceedings were forwarded to the Collector, Surendranagar and that, an appeal was filed by the Government in the District Court which was pending for

decision. Even two days earlier, on 2-11-1982, the learned Magistrate Mr.S.B.Mehta had written a letter to the Mamlatdar, Chotila for compliance of the order dated 30-10-1982 for handing over the muddamal oil barrels to the complainant. The said Magistrate Mr.S.B.Mehta had ultimately made an order on 6-11-1982 treating the application of the complainant making grievance of non-compliance as a complaint under Section 195 of the Code of Criminal Procedure and directed process in form of bailable warrant for Rs.2,000/- to issue on the godown keeper and summons against the rest of the accused under Sections 166, 186, 228 read with Sections 34, 114, 120 of the IPC and directed separate criminal case number to be given to that complaint.

2.3 Thereafter, on 9th December 1982, Special criminal Application No.1658 of 1982 was filed by the accused against the said Criminal Case No. M/97/1982 (which was the case registered by the police on the basis of the Case No.City/M/76/1982). In that petition, by order dated 5-12-1990, a copy of which is at Anenxure "C" to the petition, Justice N.J.Pandya quashed the complaint and set aside the order of delivery of the muddamal made on 30-10-1982 and also the order dated 6-11-1982 made by Mr.S.B.Mehta. As a sequal to that decision, the learned Single Judge made a "Note", a copy of which is at Annexure "F" to the petition, suggesting to the Hon'ble the Chief Justice and the Standing Committee of the High Court to initiate appropriate proceedings against "erring Magistrate Mr.S.B.Mehta" and also suggesting that a note may be made in the confidential report of the said Judicial Magistrate i.e. Mr.S.B.Mehta.

2.4 It is then stated in the petition that years had rolled by and the petitioner who continued to serve at various places mentioned in paragraph 12 of the petition, earned promotion as Civil Judge (S.D.) and Chief Judicial Magistrate by order dated 26-2-1990. It is stated that his work was adjudged "good" and "very good", and save and except the said single incident in question, the High Court found for almost 18 years, till the petitioner was compulsorily retired, no fault of any kind whatsoever, moral, legal or of impropriety against the petitioner in discharging his duties as a judicial officer of the State nor was it even alleged.

2.5 No departmental proceedings were instituted against the petitioner on the basis of the said Note of Justice N.J.Pandya for years. However, on 7-4-1992, the petitioner received a letter from the District Judge asking him to give his explanation to the "Note" of

Justice N.J.Pandya and thereafter, on 20-9-1996, he was served with a charge-sheet, a copy of which is at Annexure "H" to the petition. The petitioner sought by his letter dated September 27, 1996 certain papers, including the Rojkam from the Registrar. But the Registrar wrote a letter dated 22-11-1996 stating, inter alia, that certain documents mentioned therein, including Rojkam and the Preliminary Inquiry Report, were not available. As regards the preliminary inquiry report, it was stated that no preliminary inquiry was held and hence, no statements were recorded (Annexure "I").

2.6 The petitioner replied to the charge-sheet by his letter dated 27-1-1997, at Anenxure "J" to the petition. Thereafter, the inquiry officer made a report (Annexure "K") to the High Court holding that the delinquent was not guilty of any of the charges. The High Court, however, did not agree with the report of the inquiry officer and issued notice on 25-9-1998 (at Annexure "L") asking the petitioner to show cause against the proposed penalty of dismissal. In paragraph 24 of the petition, it is pointed out that, in a note, detailed reasons were recorded by the High Court for differing with the report of the Inquiry Officer. Thereafter, the petitioner, on October 12, 1998, replied to the show cause notice. The High Court had, on December 23, 1998, recommended to the State Government to retire the petitioner compulsorily, and on the basis of that recommendation, the petitioner came to be compulsorily retired by the impugned order. It was alleged that the impugned order was not passed with the approval or consent of all the Judges. However, as noted above, all the contentions on this aspect, were given up. According to the petitioner, there was no evidence to show, either oral or documentary, that the order passed by the petitioner was made with any oblique or corrupt motive. It was contended that the petitioner was a probationer and a novice at the relevant time and, therefore, it could not be expected of such a Magistrate to know the scope and ambit of the Magistrate's jurisdiction in dealing with the goods seized under the Essential Commodities Act, while deciding an application under Section 457 of the Code. It was stated that there was no lack of good faith on the part of the petitioner. It was contended that the Assistant Public Prosecutor was not required to be heard, because, the case was filed as a private complaint and not as a police case.

Contentions raised for the petitioner :

3. The learned Senior Advocate appearing on behalf of the petitioner contended that no opportunity was given

to the petitioner by the disciplinary authority prior to recording the disagreement with the findings recorded by the inquiry officer. It was also argued that delay in serving the charge-sheet, holding the inquiry and inflicting the punishment, which had caused serious prejudice to the career of the petitioner, vitiated the inquiry proceedings and the impugned order. It was submitted that delay in initiating the proceedings amounted to denial of fair hearing and violation of the principles of natural justice and therefore, the entire proceedings were vitiated. The learned counsel contended that documents including the report of preliminary inquiry though demanded were not supplied and despite the fact that a preliminary inquiry was conducted and the preliminary inquiry report did exist, the Registrar Mr.J.K.Patel had wrongly informed the petitioner that there was no such preliminary inquiry held. It was argued that if the preliminary inquiry report had been supplied, the petitioner would have known as to what was the reason for his being implicated when in the Note of Justice N.J.Pandya, a suggestion was made for holding an inquiry against the Judicial Magistrate Mr.S.B.Mehta and there was no mention of the petitioner's name made in that Note. The learned counsel also argued that the order, which is judicial in character and made by judicial officer in discharge of his duty, even if it is wrong or erroneous, cannot be construed as a misconduct more particularly in absence of any cogent, independent or reliable evidence of malice. It was finally contended that compulsory retirement could not have been ordered by way of punishment. This argument the learned Senior Advocate rightly did not pursue on noticing that compulsory retirement was one of the major punishments prescribed under the Rules.

3.1 In support of his contentions, the learned Senior Advocate placed reliance on the following decisions :

[a] The decision of the Supreme Court in Yoginath D. Bagde v. State of Maharashtra, reported in AIR 1999 SC 3734, was cited for the proposition that where the disciplinary authority disagreed with the findings recorded by the enquiry officer in favour of the officer of subordinate judiciary, the reasons for such disagreement were required to be communicated and an opportunity to show cause against taking such different view was required to be given. The Court was dealing with the provisions of Rule 9 of the Maharashtra Civil Services (Discipline and Appeal) Rules (1979), in which it was provided that the disciplinary

authority shall, if it is not the inquiring authority, consider the record of the inquiry and record its findings on each charge. If it disagrees with the findings of the inquiring authority on any article of charge, it shall record its reasons for such disagreement. In paragraph 33 of the judgement, the Supreme Court held that a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. It was held that the the right to be heard to which the delinquent was entitled being a constitutional right of an employee, cannot be taken away. In paragraph 34 of the judgment, it was found that the Disciplinary Committee instead of forming a tentative opinion had come to a final conclusion that the charges against the appellant were established. In paragraph 36 of the judgment, the Supreme Court held that it was not indicated to the delinquent that the Disciplinary Committee had come only to a "tentative" decision and that he could show cause against that too. The Supreme Court concluded that the Disciplinary Committee was wholly in error in disagreeing with the findings recorded by the Enquiry Officer.

[b] The decision of the Supreme Court in K.P.Tiwari v. State of Madhya Pradesh, reported in AIR 1994 SC 1031, was cited to point out that it was held therein that a judge tries to discharge his duties to the best of his capacity. While doing so, sometimes, he is likely to err. It is well said that a judge who has not committed an error is yet to be born. And that applies to judges at all levels from the lowest to the highest. Sometimes, the difference in views of the higher and the lower courts is purely a result of a difference in approach and perception. On such occasions, the lower courts are not necessarily wrong and the higher courts always right. The Supreme Court then observed:

"It has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly

under a psychological pressure with all the contestants and their lawyers almost breathing down their necks more correctly up to their nostrils. They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however gross it may look, should not, therefore, be attributed to improper motive. It is possible that a particular judicial officer may be consistently passing orders creating suspicion of judicial conduct which is not wholly or even partly attributable to innocent functioning. Even in such cases, the proper course for the higher court to adopt is to make note of his conduct in the confidential record of his work and to use it on proper occasions. The judges in the higher courts have also a duty to ensure judicial discipline and respect for the judiciary from all concerned. The respect for the judiciary is not enhanced when judges at the lower level are criticized intemperately and castigated publicly, no greater damage be done to the administration of justice and to the confidence of the people in the judiciary when the judges of the higher courts publicly express lack of faith in the subordinate judges for one reason or the other." (emphasis added).

[c] The decision of the Supreme Court in P.C.Joshi v. State of U.P. reported in AIR 2001 SC 2788, was cited to point out that, in paragraph 5 of the judgement, the Court referred the basis upon which a disciplinary action can be initiated in respect of the judicial or quasi-judicial action:

"(i) where the judicial officer has conducted in a manner as would reflect on his reputation or integrity or good faith or devotion to duty;

(ii) that there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) that if he has acted negligently or that he omitted the prescribed conditions

which are essential for the exercise of the statutory powers;

(iv) that if he had acted in order to unduly favour a party;

(v) that if he had been actuated by corrupt motive."

[d] The decision of the Supreme Court in Union of India v. H.C.Goel, reported in AIR 1964 SC 364, was cited to point out that, in paragraph 7 of the judgement, the Supreme Court, while appreciating the anxiety of the Union of India to root out corruption from public service, observed that the Court cannot ignore the fact that in carrying out the said purpose mere suspicion should not be allowed to take place of proof even in domestic inquiries.

[e] The decision of the Supreme Court in Zunjarrao Bhikaji Nagarkar v. Union of India, reported in AIR 1999 SC 2881, was cited for the proposition that, to maintain any charge-sheet against a quasi-judicial authority, something more has to be alleged than a mere mistake of law. If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings. The negligence in a quasi judicial adjudication is not negligence perceived as carelessness, inadvertence or omission but as culpable negligence.

[f] The decision of the Supreme Court in State of Gujarat v. Umedbhai M. Patel, reported in AIR 2001 SC 1109, was cited to point out that, in paragraph 11 of the judgement, the law relating to compulsory retirement was crystallized and it was, inter alia, held that compulsory retirement shall not be imposed as a punitive measure.

[g] The decision of the Supreme Court in State of Punjab v. Chamanlal Goyal, reported in (1995)2

SCC 570, was cited to point out that the Supreme Court had observed in paragraph 9 of the judgement that, it is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegation of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charge.

[h] The decision of the Supreme Court in State of Madhya Pradesh v. Bani Singh, reported in 1990 (Supp) SCC 738 was cited to point out that the Supreme Court, finding that there was no satisfactory explanation for the inordinate delay of 12 years in issuing the charge memo, held in paragraph 4 of the judgement that it will be unfair to permit the departmental enquiry to be proceeded with.

Contentions raised for the respondents :

4. The learned Advocate General appearing for the respondent High Court contended that delay cannot be a ground for setting aside an order of punishment nor for stopping initiation of departmental proceedings unless prejudice has been caused to the delinquent because of such delay. He submitted that, in the present case, there was no prejudice caused to the delinquent. He submitted that, in fact, the delay has enabled the petitioner to continue in service for a long period and even to earn promotion. It was argued that the Note of Justice N.J.Pandya was made on 13-12-1990 and therefore, the period prior to that cannot be counted for computing the delay in initiating the departmental proceedings. It was also argued that, in the very nature of things, such departmental proceedings against the judicial officers were time consuming and entailed delay. The learned Advocate General supported the impugned order of compulsory retirement passed against the petitioner on the reasons given in the final order. It was submitted that there was ample material before the delinquent to be alerted to the fact that the Civil Supplies Officers had

seized essential articles and that they were acting in the discharge of their statutory duties under the Essential Commodities Act. It was submitted that both in the complaint as well as in the police report, there were indications that the accused were officers of the Civil Supplies Department and that the muddamal-oil barrels were seized along with the truck under the provisions of the Essential Commodities Act. It was submitted that, as a probationer Magistrate, the petitioner ought to have been more vigilant and careful and could not have made an order for which he had no jurisdiction to hand over the muddamal to the complainant. He submitted that such essential articles are required to be dealt with under the provisions of the Essential Commodities Act and there was no power with the Magistrate to hand over the goods by making such an order. It was further submitted that the other Judicial Magistrates Mr.R.G.Chaudhary, Mr.H.M.Prajapati and Mr.S.B.Mehta had made orders which were not as objectionable as the one made by the delinquent and their orders were made in exercise of jurisdiction as held in the final order passed against the petitioner. It was submitted that the order was so rashly made by the delinquent that the inference of corrupt motive was fully justified in this case. The learned Advocate General argued that the High court cannot sit in appeal over the decision of the administrative body and therefore, there is no warrant for interference with the impugned decision.

4.1 The learned Advocate General placed reliance on the following decisions :

[a] The decision of the Supreme Court in Abdul Rehman Antulay v. R.S.Nayak, reported in (1992)1 SCC 225, was cited for the proposition that each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. It was submitted that this proposition applied also to the disciplinary proceedings as well, as held by the Supreme Court in State of Punjab v. Chaman Lal Goyal, reported in (1995)2 SCC 570. The latter decision was relied upon by the learned counsel, also for the proposition contained in paragraph 9 of the judgement that if delay was likely to cause prejudice to the delinquent officer in defending himself, the inquiry had to be interdicted, pointing out that, in the said paragraph, the Supreme Court had referred to the various factors for balancing the interest of justice as well as

interest of administration.

[b] The decision of the Supreme Court in Registrar of Co-operative Societies, Madras v. F.X.Fernando, reported in (1994)2 SCC 746, was cited to point out that it was held in paragraph 17 of the judgement that the finding of the High Court that there was a long delay in initiating of departmental proceedings could not be supported, because, in that case before the Supreme Court, the Directorate of Vigilance & Anti-Corruption had not been prompt and therefore, the appellant Registrar, Co-operative Societies could not be faulted.

[c] The decision of the Supreme Court in Deputy Registrar, Co-operative Societies, Faizabad v. Sachindra Nath Pandey, reported in (1995) 3 SCC 134, was cited to point out from paragraph 7 of the judgement that finding that the charges against the delinquent were of very serious nature, the Supreme court held that it was, therefore, not inclined to close the matter only on the ground that about sixteen years had elapsed since the commencement of the disciplinary proceedings.

[d] The decision of the Supreme Court in Secretary to Government, Prohibition & Excise Department v. L. Srinivasan, reported in (1996)3 SCC 157 was cited to point out that the Supreme Court, on the ground that the nature of charges were such that it would take long time to detect the embezzlement and fabrication of false record which should be done in secrecy, held that in quashing the suspension and the charges on the ground of delay in initiation of the disciplinary proceedings, the Administrative Tribunal had committed the grossest error in exercise of its judicial review.

[e] The decision of the Supreme Court in Food Corporation of India v. V.P.Bhatia, reported in (1998)9 SCC 131, was cited for the proposition that delay in initiation of disciplinary proceedings may cause prejudice to the employee concerned in defending himself and, therefore, the Courts insist that disciplinary proceedings should be initiated with promptitude and should be completed expeditiously. The question as to whether there was undue delay in initiation of

disciplinary proceedings or whether they are being unnecessarily prolonged has to be considered in the light of the facts of the particular case.

[f] The decision of the Supreme Court in Union of India v. B.C.Chaturvedi, reported in AIR 1996 SC 484, was cited for the proposition that, delay in initiating the disciplinary proceedings cannot by itself be regarded as an unfair procedure depriving the livelihood of a public servant offending Article 14 or 21 of the Constitution.

[g] The decision of the Supreme Court in The Food Corporation of India v. George Varghese, reported in AIR 1991 SC 1115, was cited to point out that the Division Bench was justified in refusing to interfere only on the ground of delay, because, the delay was not occasioned on account of inaction on the part of the appellant - Food Corporation of India, in initiating the departmental proceedings.

[h] The decision of the Supreme Court in Additional Superintendent of Police v. T. Natarajan, reported in 1998(7) S.L.R. 403, was cited to point out that, in paragraph 7 of the judgement, it was held that it is settled law that mere delay in initiating proceedings would not vitiate the enquiry unless the delay results in prejudice to the delinquent officer.

[i] The decision of the Supreme Court in P. Ramachandra Rao v. State of Karnataka, reported in AIR 2002 SC 1856, was cited to point out that the Supreme Court, approving the Antulay's decision, held that, in its zeal to protect the right to speedy trial of an accused, the Court cannot devise and almost enact bars of limitation beyond which trial shall not proceed and arm of law shall lose its hold though the legislature and the statutes have not chosen to do so. Bars of limitation, judicially engrafted, are, no doubt, meant to provide a solution to the aforementioned problems. But a solution of this nature gives rise to greater problems like scuttling a trial without adjudication, stultifying access to justice and giving easy exit from the portals of justice. Such general remedial measures cannot be said to be apt solutions. For two reasons, such bars of

limitation were held as uncalled for and impermissible: firstly, because it tantamounts to impermissible legislation - an activity beyond the power which the Constitution confers on judiciary, and secondly, because such bars of limitation fly in the face of law laid down by Constitution Bench in A.R. Antulay's case (1992 AIR SCW 1872 : AIR 1992 SC 1701 : 1992 Cri.LJ 2717) and, therefore, run counter to the doctrine of precedents and their binding efficacy.

[j] The decision of the Supreme Court in Union of India v. K.K.Dhawan, reported in AIR 1993 SC 1478, was cited for the proposition from paragraph 28 of the judgement to the effect that the officer, who exercising judicial or quasi judicial powers, acts negligently or recklessly or in order to confer undue favour on a person, is not acting as a judge. It was held that though the legality of the order could be questioned in appeal or revision, the Government was not precluded from taking disciplinary action for violation of the conduct rules. The cases in which such disciplinary action could be taken are: where the officer had acted in a manner as would reflect on his reputation or integrity or goodfaith or devotion to duty, if there is a prima facie material to show recklessness or misconduct in the discharge of his duty, if he acts in a manner which is unbecoming of a government servant, or negligent or omits the prescribed conditions which are essential for the exercise of the statutory powers, or has acted in order to unduly favour a party or if he had been actuated by corrupt motive.

[k] The judgement of the Supreme Court in State of U.P. v. Harendra Arora, reported in AIR 2001 SC 2319, was cited for the following proposition laid down in the context of non-supply of a copy of enquiry report:

> "Thus, from a conspectus of the aforesaid decisions and different provisions of law noticed, we hold that provision in Rule 55-A of the Rules for furnishing copy of enquiry report is procedural one and of a mandatory character, but even then a delinquent has to show that he has been prejudiced by its non-observance and consequently the law laid down by the

Constitution Bench in the case of ECIL, to the effect that an order passed in a disciplinary proceedings cannot ipso facto be quashed merely because a copy of the enquiry report has not been furnished to the delinquent officer, but he is obliged to show that by non-furnishing of such a report, he has been prejudiced, would apply even to cases where there is requirement of furnishing copy of enquiry report under the statutory provisions and / or service rules."

[l] The decision of the Supreme Court in State Bank of Patiala V. S.K.Sharma, reported in AIR 1996 SC 1669, was cited for pointing out the principles evolved in in context of disciplinary inquiries, in paragraph 32 of the judgement in which it is, inter alia, laid down that there may be situations where the interests of State or public interest may call for curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public / State interest with the requirement of natural justice and arrive at an appropriate decision.

[m] The decision in The High Court of Judicature at Bombay v. Shashikant S. Patil, reported in AIR 2000 SC 22, was cited for the proposition that the settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.

[n] The decision in State of Andhra Pradesh v. N. Radhakishan, reported in AIR 1998 SC 1833, was cited for the proposition that, in considering whether delay has vitiated the disciplinary proceedings, the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It was held that, normally, disciplinary proceedings should be allowed to take its course as per the relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in

conducting the disciplinary proceedings. Ultimately, the Court has to balance these two diverse considerations.

[o] The decision of the Supreme Court in Canara Bank v. Shri Debasis Das, reported in AIR 2003 SC 2041, was cited to point out that, where the delinquent had failed to show any prejudice, it was held that personal hearing given by the appellate authority was sufficient post decisional hearing.

[p] The decision of the Supreme Court in High Court of Judicature at Bombay v. Udaysingh s/o Ganpatrao Naik Nimbalkar, reported in AIR 1997 SC 2286, was cited for the proposition that it is within the exclusive domain of the disciplinary authority to consider the evidence and whether the charge has been proved or not, and judicial review is not an appeal from a decision. It was held that the High Court, while exercising the power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. The test laid down by various judgments of the Apex Court was, to see whether there is evidence on record to reach the conclusion that the delinquent had committed misconduct and whether a reasonable man in the circumstances would be justified in reaching that conclusion. It was held that the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, even imposition of penalty of dismissal from service would be well justified. The decision reported in the same volume at page 2631 was cited to point out for the proposition laid down in paragraph 17 of the judgement that, if the evidence adduced during the departmental enquiry proves the proclivity of corrupt conduct on the part of the judicial officer and enquiry into his conduct is fair and germane, the imposition of punishment should be appropriate to the magnitude of the misconduct.

[q] The decision of the Supreme Court in Union of India v. J. Ahmed, reported in AIR 1979 SC

1022, was cited to point out that it was observed therein that misplaced sympathy can be a great evil, where an error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. It was held that carelessness can often be productive of more harm than deliberate wickedness or malevolence.

[r] The decision of the Supreme Court in Yoginath D. Bagade v. State of Maharashtra, reported in (1999)7 SCC 739 was cited for the proposition that the High Court can exercise its control jurisdiction under Article 235 of the Constitution through a Committee.

[s] The decision of the Supreme Court in The Tata Engineering & Locomotive Co. Ltd. v. S.C.Prasad, reported in 1969(3) SCC 372 was cited for the proposition that when the preliminary reports did not form part of evidence before the enquiry officer nor were they relied on by them for arriving at their findings, it was not obligatory on the company to disclose them and the omission could not be a ground for holding that their non-disclosure was a non-observance of the rules of natural justice. (See paragraph 19).

[t] The decision of the Supreme Court in Superintendent, Government T.B. Sanatorium v. J. Srinivasan, reported in (1998) 8 SCC 572, was cited to point out that where no prejudice was shown to have resulted to the respondent on account of not supplying the preliminary inquiry report, it was held that the findings of the disciplinary authority could not have been interfered with by the Tribunal.

[u] The decision of the Supreme Court in S.K.Singh v. Central Bank of India, reported in J.T. 1996(9) SC 542, was cited for the proposition that, though copy of the report was not supplied to the delinquent, since the delinquent was not able to satisfy the Division Bench that prejudice was caused to him on account of non-supply of the inquiry report, the Supreme Court, on facts, found that there was no illegality in the decision taken by the High Court.

Reasons :

5. The principles of natural justice and the duty of fairness include the right to a fair hearing. Undue delay in the processing of an administrative proceeding that impairs the fairness of hearing can be remedied by an appropriate writ. Delay, without anything more, will, however, not warrant a stay of proceedings as an abuse of process at common law. Quashing proceedings for mere passage of time would tantamount to a judicially created limitation period. In the context of the administrative law, there must be proof of significant prejudice which results from an unacceptable delay. A question may indeed arise whether the delay could amount to denial of natural justice even when the respondent's ability to have a fair hearing has not been compromised.

5.1 There can be no doubt that the principles of natural justice and the duty of fairness are part of every administrative proceeding that is likely to have civil consequences. Where delay is of such magnitude that it impairs a party's ability to answer the complaint against him or her, such as, in cases where memories have faded, essential witnesses have died or are unavailable in foreseeable future or crucial evidence is lost, then administrative delay may be invoked to impugn the validity of the administrative proceedings and an adequate remedy can be provided.

5.2 The question to be examined will be, whether the ability of the delinquent to make full answer and defence is compromised. If so, it would amount to a denial of natural justice. The concept of natural justice or procedural fairness is broad enough to encompass principles which, in other contexts, have been termed abuse of discretion or abuse of process because of delay and related matters. The High Court, in exercising its supervisory function over an administrative tribunal is entitled to prohibit that tribunal's process in cases of unfairness or oppression caused or contributed to by delay resulting in denial of natural justice. Abuse of power is a broad notion akin to oppression. It encompasses procedural unfairness including unjust delay. However, not all lengthy delays are unjust. Regard must be had to the causes of delay and to resulting prejudicial changes of position. When a party relies on delay as amounting to an abuse of power, it is incumbent on that party to demonstrate a resulting prejudicial change of position.

5.3 The stringency of the requirements for showing that delay constitutes a breach of fairness would seem to

be, to some extent, due to the drastic nature of the remedy. Unlike in other instances of procedural unfairness where it is open to a Court to remit the matter for re-determination in a procedurally fair manner, the remedy for undue delay would usually be to prevent the tribunal from exercising its authority either by prohibiting it from proceeding with the hearing or by quashing the resulting decision where right to defend is impaired to a substantial extent when it is so demonstrated.

5.4 To constitute a breach of duty of fairness, the delay must have been unreasonable or inordinate. There is no abuse of process by delay per se. The delinquent must demonstrate that the delay was unacceptable to the point of being so oppressive as to taint the proceedings.

5.5 The determination of whether a delay has become inordinate depends on the nature of the case and its complexity, the facts and issues, the purposes and nature of the proceedings, whether delinquent contributed to the delay, or waived the delay, and other circumstances of the case. The determination of whether a delay is inordinate is not based on the length of the delay alone, but on contextual factors, including the nature of the various rights at stake in the proceedings and whether community's sense of fairness would be offended by the delay. The sense of the community will obviously be offended if Judges who commit misconduct are allowed to go scot-free merely because of procedural delays that may have in fact worked to their advantage.

5.6 Where delay is so egregious that it amounts to an abuse of power or can be said to be oppressive, the fact that the hearing itself will be a fair one is of little or no consequence. However, unreasonable delays must be identified with the specific circumstances of every case. In assessing a particular delay in the process of a specific administrative body, two important aspects should be borne in mind, namely, (i) not all delay is the same and (ii) not all administrative bodies are the same.

5.7 In administrative context, delay can be general delay and individual delay. General delay may include certain kinds of delay due to substantive and procedural complexities inherent in the kind of the matter the Tribunal deals with, but it may also include delays from systemic problems. Individual delay may relate to the special complexity of a particular decision, but, it may also include delays from inattention to a particular file.

5.8 To say that all administrative bodies are not same is an understatement, though such bodies do have some common features. However, the diversity of their powers, mandate, and structure is such that to apply particular standards from one context to another might well be entirely inappropriate. Thus, inevitably, a Court's assessment of a particular delay in a particular case before a particular administrative body has to depend on a number of contextual analytical factors. In order to differentiate reasonable and unreasonable delay, a balancing exercise becomes necessary. The Courts have to remain alive not only to the needs of administrative systems under strain, but also to their good-faith efforts to provide procedural protection to the alleged wrong-doers. The approach of the courts would be liberal when it appears that the hearing will remain fair inspite of the delay and when the delay has not risen to the level of a shocking abuse, notwithstanding its seriousness.

5.9 The High Court, by the very nature of its powers, has besides its main judicial work, a control jurisdiction over the entire subordinate judiciary. It is not just a full time job of conducting departmental proceedings. Time consumed in initiating and deciding the departmental proceedings by the High Court cannot be viewed on the scale of number of days or months, because, that is not the only work to be done. It is only one type of ancillary work of judicial administration to be done by Judges who devote most of their time to doing judicial work in order to cope up with the mounting arrears. Therefore, delay in initiating and deciding the departmental proceedings has to be viewed in this background so far as the judicial institutions are concerned.

5.10 In the present case, the departmental proceedings were allowed to be completed by the delinquent who never challenged them on the ground that delay had caused any prejudice to him. When the departmental proceedings are allowed to be completed without any plea of prejudice on account of delay being raised and initiation and conduct of the proceedings is not challenged, the delinquent is deemed to have waived any objection on the ground of prejudicial delay and it would not be open to the delinquent to challenge the order of punishment on the ground of delay in taking the disciplinary action.

5.11 Prejudice on account of delay in initiating the departmental proceedings would relate to the conduct of

the inquiry and its outcome. If it is not shown as to in what manner the delinquent was handicapped or disadvantaged in answering the charges or in leading evidence, the question of prejudice will not arise. In the present case, the matter rested on the judicial order passed by the delinquent and other judicial orders which were available on record. The Rojkam was not made available, but it is not shown how was it relevant. The dates on which various proceedings took place were already reflected in the complaint, applications, orders, panchnama and police report. It is on their basis that the Rojkam would have been prepared. There is no prejudice pointed out by non-supply of the Rojkam, which was not on record. It is obvious that the disciplinary authority had no interest in removing the Rojkam. Non-supply of daily board was hardly relevant, because, all the relevant dates on which the matters appeared on the board for hearing are reflected in the applications, orders and police reports. The daily board was required by the petitioner to show that his board was very heavy. The fact that the daily boards of subordinate courts in India are usually heavy, can hardly be disputed. However, pressure of work, can hardly be a good excuse for a gross dereliction of duty.

5.12 Delay has, in the present case, in fact, enabled the delinquent to continue in service and get promotion. If the matter had been decided in the same way as it has been against the delinquent within a few months of the date of the order that he made on 30-10-1982, the services of the delinquent would have been terminated at that time. However, the very nature of judicial process surrounding the order made by the delinquent took time and it was only when the complaint and the orders made therein were quashed, including the order of the delinquent of directing the return of the muddamal oil barrels, the fact of the orders being made in dereliction of duty came to light, followed by a preliminary inquiry and the departmental proceedings which, by their very nature, would consume time. Since the delinquent was not under suspension, no prejudice resulted to him due to the pendency of the proceedings, even if the concept of prejudice was to be enlarged beyond prejudice in opportunity of fair hearing in the matter. The contention raised on behalf of the petitioner that delay in serving the charge-sheet, holding of inquiry and inflicting punishment caused serious prejudice to the petitioner's career vitiating the inquiry proceedings is, therefore, without any substance in the facts of the present case, as it is not demonstrated how it had prejudiced the petitioner in the conduct of the

departmental inquiry.

5.13 We may hasten to add that it would be desirable if the disciplinary proceedings are completed within a reasonable time and it is high time that the High Court on its administrative side should devise a system and procedure to decide the disciplinary matters against the judicial officers at the earliest within a time bound schedule that should be strictly followed, except in unavoidable circumstances. Gross delays in disposing of the departmental proceedings against judicial officers increase pendency of such cases and would invite justifiable criticism of administrative lethargy and application of different standards to its own delays when they are avoidable. We urge the High Court on its administrative side to bestow its attention to this aspect and adopt ways and means for early disposal of the disciplinary proceedings within a time-bound schedule that may be fixed in the rules with power to extend time for good reasons.

6. We may now proceed to consider whether the material on record warranted a finding of the guilt of the delinquent. Departmental inquiry was held against the delinquent on the following charges :

"That while you were working as 3rd Jt. Civil Judge (JD) & JMFC, Jamnagar, for the period from 14.6.82 to 17.6.1985:

(1) Criminal Misc. Application No. 97/82 was filed on 19.10.82 by one Ranchhod Durgashanker Joshi of Jamnagar, against (1) Mr. S.K. Chari, (2) Mr. Sisodiya and (3) Mr. N.D. Parmar, all Government Servants, in the court of Judicial Magistrate First Class, Jamnagar, for the offence punishable u/s. 390, 391, 166, 34 read with Section 114 of the Indian Penal Code, which was sent for investigation u/s 156 (3) of Criminal Procedure Code to the Police Sub-Inspector of Jamnagar City and the case was registered as Jamnagar City M. Case No. 76/82.

(2) That in the aforesaid case (in Cri. Misc. Application No. 97/82, one application at exh. 5 was filed by the complainant on 26.10.1982 for return of 45 barrels of the Oil and the truck, which was sent to the Police for report and on 30.10.82, it was reported by the Jamnagar Police that the said Muddamal was seized on 1.10.1982 by Mr. S.K. Chari, who is one of

the accused in the said Criminal Misc. Application No. 97/82, and it was kept in the custody of Mamlatdar of Chotila and after the seizure of the said Muddamal by Jamnagar Police in the said case, it was allowed to be kept in the custody of Mamlatdar on 25.10.82.

(3) That on 30.10.82, you had passed the order on said Exh. 5 in the said case to return the said muddamal to the complainant on furnishing the bond of Rs. 1,00,000/- with one surety of the like amount, though it was brought to your notice that the said muddamal was seized under Order 26 of the Gujarat Essential Article (Licensing Control and Stock Declaration) Order 1981.

(4) That, though under the Essential Commodities Act, you had no jurisdiction to return the muddamal which was seized under Order 26 of the Gujarat Essential Article (Licensing Control and Stock Declaration) Order, 1981, you had returned the same to the complainant with an oblique motive.

(5) That you had also no territorial jurisdiction as the offence alleged in the complaint was committed at Chotila, which was not under the jurisdiction of the Judicial Magistrate First Class, Jamnagar, you had exercised jurisdiction with oblique motive and thereby:

a) By implication you were guilty of corrupt practice;

b) You were guilty of dereliction in discharging your judicial functions and;

c) You acted in a manner unbecoming of a Judicial Officer.

These acts of yours are acts of grave misconduct and tantamount to conduct unbecoming of a Judicial Officer, violating the provisions contained in Rule 3 of the Gujarat Civil Services (Conduct) Rules, 1971."

7. The complaint was filed by Ranchhod Durgashanker Joshi, Manager of the Trust, manufacturing groundnut oil. As per the complaint, on 30th September 1982, at midnight, the accused No.1 came with his persons, along

with the police and under the pretext of an illegal and arbitrary search and seizure procedure, by giving threats, made an illegal and spurious seizure order (as stated in paragraph 2 of the complaint in its original vernacular version). It was then stated therein that against the illegal search and seizure order dated 1-10-1982, the trust had filed Regular Civil Suit No.863 of 1982 on 1-10-1982 in which the Civil Court had restrained the accused No.1 and his agents or servants from implementing the seizure order dated 1-10-1982 and also restrained them from treating the said goods as seized or attached and from preventing the plaintiff from dealing with them as if they were not attached or seized and from obstructing the plaintiff from dealing with or selling those goods. It has come on record that interim injunction was granted on 4-10-1982 by the Joint Civil Judge (S.D). - Jamnagar Shri H.M.Prajapati in the above terms as prayed for in paragraph 9(A) of the plaint filed by Mangal Traders, referring to the said seizure order dated 1-10-1982. The complaint, filed on 19-10-1982 by the Manager of Ramdev Oil Mill Trust, Jamnagar (R.P.A. No.97/82), was for the offences under Sections 390, 391, 166 read with Section 34, 114 of the IPC. In paragraph 4 of the complaint, it was stated that though the accused had known about the order dated 1-10-1982 passed by the Civil Judge, it was flouted by them. It was alleged in paragraph 5 of the complaint that despite the knowledge of such order of the Civil Court, the accused had, when the 45 barrels of oil was being sent by truck No.GRT 5358 (5607) under bill, gate-pass and vouchers, under threats and coercion committed robbery in respect of the said 45 barrels of oil and the truck, and were appropriating the oil from the barrels for their personal use. An order was made on this complaint by the J.M.F.C. Shri R.C.Chaudhary on 19-10-1982 directing investigation of the offences complained of under Section 156(3) of the Code of Criminal Procedure and to submit a report on or before 10-11-1982. The said case was registered as No.City/M/76 of 1982. On 26-10-1982, Shri H.M.Prajapati, who was in charge of Court No.3, Civil Judge (J.D.) & J.M.F.C. passed an order on application exh.5 made in the complaint, praying for return of the muddamal on the ground that, during the investigation under section 156(3), the police had seized the 45 oil barrels of oil and the truck on 25-10-1982, and that the goods being perishable and inflammable, and that the truck, if it lies in the seized condition, will be damaged, called for the police report.

7.1 Thereafter, a police report was submitted on 30-10-1982 stating therein that the seized stock of goods

of 45 barrels of muddamal loose oil, which was seized in connection with the offences registered under Crime Register No.76 of 1982 was of the value of Rs.1 lac and was kept in the custody of the Mamlatdar, Chotila. On the basis of the seizure report, the delinquent made an order on 30-10-1982, after hearing the advocate for the complainant and considering the said police report, directing that the seized muddamal of 45 barrels of oil which was kept in the custody of mamlatdar after seizure by the police, be entrusted to the complainant on the condition of furnishing a solvent surety in the sum of Rs.1 lac and on the condition that it should be produced before the Court when required. There was no direction in the said order about handing over the truck to the complainant. While making this order, the Magistrate took into account the fact that the muddamal oil was lying in a seized condition since twenty days and was likely to deteriorate. This judicial order on the basis of which the departmental inquiry was held against the delinquent, who was a probationer at that time, resulting in the punishment of his compulsory retirement, was in fact not carried out. Therefore, an application for contempt was filed on 6-11-1982 by the complainant, which Mr.S.B.Mehta, Judicial Magistrate First Class (and not the delinquent Mr.K.B.Mehta) ordered to be treated as a complaint under Section 195 on the ground that the accused - officers had "deliberately and intentionally disobeyed this order of the Court under various pretexts" and ordered a bailable warrant for Rs.2,000/- to be issued against the godown keeper and also the process against the rest of the accused. Thereafter, on 9-12-1982, Special Criminal Application No.1658 of 1982 was filed by the accused persons challenging the orders made in the Misc. Criminal Application No.97 of 1982. That petition came to be disposed of by Mr.Justice N.J.Pandya on 5th December 1990. The learned Single Judge found that though the edible oil stock of 45 barrels, each containing 200 ltrs., was seized on 1-10-1982 by the Civil Supplies Department, which articles were of the ownership of Shri Ramdev Oil Mill, Jamnagar, the Courts, both on civil and criminal side, entertained the suit as well as the complaint. The Court observed that this was a sad state of affairs. On one hand, in the civil suit, the learned Civil Judge (S.D.) had passed an order of interim injunction and on the other, on criminal side, Misc. Criminal Application No.97/1982 came to be entertained by the Judicial Magistrate First Class of the 4th Court, at Jamnagar. It was observed that though it did appear from the complaint that the accused were all public servants and had carried out the said act in the purported exercise of their

duties, the Judicial Magistrate made an order for investigation under Section 156(3) of the Code on 19-10-1982 (That was by Mr.R.G.Chaudhary as noted above). As regards the order dated 30-10-1982, the learned Single Judge held that the Magistrate, apparently, did not wait to verify what had happened to the inquiry order that he had passed, nor did he wait for the report of the police officer and straightaway, on the day on which the application came to be given, passed an order, fully knowing that the goods were lying in the warehouse belonging to the Civil Supplies Corporation. It was observed that the learned Magistrate also knew the fact that 45 barrels of edible oil had not been seized by the police and therefore, it was difficult to understand how the learned Magistrate referred to the muddamal articles as having been obtained from the accused by the police and thereafter, lying with Chotila Mamlatdar in the said godown. The learned Single Judge then referred to the communication dated 4-11-1982 Mr.S.B.Mehta, the J.M.F.C., Jamnagar, below which the accused No.1 had made an endorsement to the effect that the articles were no longer with him and it was for the Collector to deal with the essential articles under the provisions of the Essential Commodities Act. It was observed that knowing all these facts, the learned Magistrate should have restrained from any further action in this regard. But instead, not only he (Mr.S.B.Mehta) entertained the application where grievances were made against the alleged non-compliance of the court's order, but by order on 6-11-1982, directed that another criminal case be registered against the accused for being proceeded against under the Contempt of Courts Act and other relevant provisions. The learned Single Judge, therefore, quashed the complaint and set aside the order dated 30-11-1982, as also the order dated 6-11-1982.

7.2 It is clear from the order made in Special criminal Application No.1658 of 1982 that the learned Single Judge proceeded on the footing as if all the orders were passed by the same Judicial magistrate though in fact they were made by different Judicial Officers. This is more vividly clear from the following observations made by the learned Single Judge :

> "Leaving that aside, when he has himself passed an order of investigation under Section 156(3) by the police, it was further clear that yet, no offence is disclosed and hence, it cannot be said that the aforesaid 45 barrels of edible oil is subject matter of the crime. On top of that we have also the position that the articles were not

produced as muddamal before the learned Magistrate and as such he had no jurisdiction over it. Inspite of all these circumstances, he has passed the aforesaid order of return of muddamal and compounded it further by issuing a notice of contempt as detailed above."

7.3 The learned Single Judge, who quashed the complaint and the orders made therein, in Special Criminal Application No.1658 of 1982, made a separate "Note" on 13-12-1990 suggesting appropriate proceedings against Mr.S.B.Mehta, describing him as the "erring Magistrate". We emphasize that even in this "Note", the learned Single Judge proceeded on an assumption that all the orders were made by the same Magistrate. We re-produce this Note hereunder, because, it was on the basis of this Note that a preliminary inquiry was held and for reasons not disclosed, there was no inquiry held against the Magistrate who had made the orders of directing investigation under Section 156(3) and the Magistrate who had issued bailable warrant on the godown keeper for non-complinace of the order made by the delinquent, who was just a probationer, of releasing the muddamal on conditions, and only the delinquent came to be proceeded against. Till now, we are not told how such an intriguing course occurred that insulated the senior Magistrates and placed on the altar, a probationer magistrate. The "Note" made by Justice N.J.Pandya reads as under :

"It has come to the notice of the undersigned while dealing with Special Criminal Application No. 1658 of 1982 that the learned J.M.F.C. Jamnagar Shri S.B. Mehta while dealing with Criminal Misc. Application complaining of offences under Sections 390, 391, 166, 34 & 114 of Indian Penal Code of Criminal Procedure. From the application itself, it was possible for a Magistrate, if he had read the same, to make out that the proposed accused are not only Government Servants, but the act complained of has been performed by them in discharge of their duty.

The accused were Officers of the Civil Supplies Department of the State of Gujarat and they had carried out raid in the Oil Mill where the complainant was serving. The Oil Mill in question is Messrs Ramdev Oil Mill, Jamnagar. However, the complaint was about seizure of 45

barrels of edible oil each containing about 180 litres to 200 litres, near Chotila in Surendranagar District.

Even if here was a clear-cut case of dacoity and the offenders were not State Government Servants, in no event, could a Judicial Magistrate First Class at Jamnagar had jurisdiction. Much less, therefore, could he have dealt with a prayer for custody of muddamal. Assuming that he had jurisdiction even then, there being an order of inquiry under Section 156(3) of the Code of Criminal Procedure, no muddamal pertaining to the alleged offence was with the learned Magistrate that could have been dealt with under Section 451 of 452 of the Criminal Procedure Code.

Inspite of this, on the date on which the application exh. 5 was given in the aforesaid criminal application, without calling for the report of the Police Officer or without waiting to ascertain the result of the enquiry that he himself had ordered, the learned Magistrate passed an order of return of muddamal in favour of the complainant.

The articles being a subject matter of raid under the Essential Commodities Act, they were handed over to be dealt with under the said Act to the Collector of Surendranagar District. The proposed accused no. 1 Shri H.K.Chari, therefore, promptly brought this fact to the notice of the learned Magistrate when he received the order of return of muddamal and he had categorically pointed out that under the Essential Commodities Act, the aforesaid articles are now a subject matter of enquiry being conducted by the Collector of Surendranagar.

Inspite of this, the learned Magistrate proceeded to consider this to be disobedience of the Court's order and therefore, initiated separate criminal proceedings by treating the grievance in that regard made by the complainant as a complaint under Sec. 195 of the Criminal Procedure Code and had issued process. Eventually, the muddamal did come to be returned to the original complainant.

Whatever record is thus produced in the aforesaid Criminal Application indicates that the learned

Magistrate had taken undue interest in the matter, the actions were prompted for reasons other than carrying out the interest of justice and it smacks of ulterior motive on the part of the learned Magistrate.

It is, therefore, suggested that whatever be the material still existing with the trial Court be promptly called for, it be examined along with the material placed in the Special Criminal Application and serious view of the matter be taken and be placed with the permission of the Hon'ble Chief Justice before the Standing Committee for initiating appropriate proceedings against the erring Magistrate Shri S.B. Mehta. It is also suggested that a note in this regard may be made in the Confidential Report of the said Judicial Magistrate.

13.12.1990 Sd/-
(N.J. Pandya, J.)"

(emphasis added)

8. By letter dated 7th April 1992, the petitioner was forwarded by the District Judge a copy of the aforesaid Note and asked to submit his say with regard to the judicial order passed by him below exh.5 in Misc. criminal Application No.97 of 1982.

8.1 It has come on record that when the petitioner prayed for copies of certain documents, including the preliminary inquiry report, he was, inter alia, replied by the Registrar of the High Court by letter dated 22-11-1996 that, "in the said matter, no preliminary inquiry is made, and hence no statements are recorded". Such a reply was sent despite the fact that it was clear from the record that the preliminary inquiry was in fact held and the report was submitted by the then District Judge Mr.B.P.Munshi which is in the original file of the proceedings shown to us by the learned Advocate General with his usual fairness and grace.

9. The inquiry officer, who was a Senior Judicial Officer, by his report dated March 19, 1998 found that the material on record was not sufficient to establish that the delinquent was guilty of corrupt practice or of dereliction in discharge of his duties as a judicial

officer or that he acted in a manner unbecoming of a judicial officer. It was held that there was sufficient material on record to conclude that, in all probabilities, the delinquent must have passed the order in question under a bonfide belief that he was duty bound to make an order, as required by Section 457 of the Cr.P.C. In Paragraph 5 of the inquiry report, the learned inquiry officer observed as under :

> "5. On perusal of the record of the departmental inquiry and after considering the submissions of both the sides, I am clearly of the view that the delinquent appears to have passed the questionable order under a bonafide belief that not only he had a jurisdiction to pass the order but it was obligatory for him to do so. The muddamal edible oil being a perishable goods and the muddamal truck being the only source of income of the complainant, before passing the order, the necessary formalities appears to have been dealt with such as asking for the opinion of the investigating officer who had submitted that the investigating agency was not in need of the muddamal. The record also shows that Civil Suit No. 864/82 was filed wherein the learned Civil Judge (S.D.) had passed an order of interim injunction restraining the defendant / State from implementing the order of seizure of the goods. Thus, there is sufficient material on the record to conclude that in all probabilities the delinquent must have passed the questionable order which is the base of this departmental inquiry under a bonafide belief that he was duty bound to pass such an order as required under section 457 of Cr.P.C. In my opinion, therefore, the allegations levelled against the delinquent do not appear to have been proved and the material on the record is not sufficient enough to establish satisfactorily that the delinquent is guilty of corrupt practice or of dereliction in discharging his judicial functions or that he acted in a manner unbecoming of Judicial Officer. Hence, this report."

10. By communication dated 25-9-1998, the petitioner was informed by the High Court that the High Court had tentatively come to the conclusion that the charges were proved against him for the reasons stated in the tentative decision. The said show cause notice is re-produced hereunder :

"J.K.PATEL, LL.B.
Registrar
High Court of Gujarat
Ahmedabad 380 009

CONFIDENTIAL

NO.LOB/A.0709[20]/89
(Deptt. Inq. No. 3/97)

Date 25/9/1998

To :
Mr.K.B.Mehta
Civil Judge (S.D.)
Gondal

Through : The District Judge, Rajkot

Sub: Departmental Inquiry against Mr.K.B.Mehta, the then 3rd Jt. Civil Judge (JD) & JMFC, Jamnagar (Now Jt. Civil Judge (SD), Gondal), (Departmental Inquiry No. 3/97).

Sir,

I am directed by the Honourable the Chief Justice and Judges to forward herewith a copy of the Report of the Inquiry Officer, who conducted the Departmental Inquiry No. 3/97 against you and the Tentative Decision of this High Court, on the subject noted above, and to state that after considering the circumstances, and facts emerging from the evidence on record of the inquiry, the High Court has tentatively come to the conclusion that the charges are proved against you, for the reasons stated in the Tentative decision. The High Court therefore, proposes to issue show cause Notice, as to why the penalty of dismissal from service should not be imposed upon you, for the Charges proved against you.

You are therefore hereby called upon to show cause within 16 days from the date of receipt of this Notice, as to why the proposed action should not be taken against you. You may also state whether you wish to be heard in person. On your failure to show cause, within the time allowed to you, it will be presumed that you do not wish to say anything and the matter will be processed

with accordingly.

You are requested to acknowledge the receipt of this Notice.

Yours faithfully,
sd/-
REGISTRAR

Encl :

1. Copy of the Report of Inquiry Officer.

2. Order of this High Court."

(emphasis added)

10.1 In the order attached with the show cause notice, it was described at the top as "Tentative decision in the matter of departmental inquiry against Mr.K.B.Mehta, 3rd Joint Civil Judge (J.D.) & J.M.F.C., Jamnagar .....".

10.2 It is evident from the show cause notice and the tentative order sent along with it that the decision of the High Court was of a tentative nature and the petitioner was called upon to show cause as to why the proposed action should not be taken against him. The proposed action obviously was for taking a final decision and imposing penalty of dismissal on the tentative decision, about the charges having been proved, becoming final. Though the show cause notice could have been more explicit, there was no scope for treating it only against the proposed penalty and the detailed reply to the show cause notice was, in fact, against the tentative decision of the High Court on merits and not only against the penalty proposed.

10.3 As per the provision of Rule 10(2) of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971, the disciplinary authority shall, if it disagrees with the findings of the Inquiry Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose. Along with the show cause notice, the tentative decision of the High Court was forwarded to the petitioner, as is clear from the record. Even in paragraph 24 of the petition, the petitioner has admitted that, in a note, detailed reasons were recorded by the High Court for differing with the report of the inquiry officer. This is, therefore, not a

case where the show cause notice could be construed only as a show cause notice against the proposed punishment of dismissal. It was clearly a show cause notice against the proposed action of taking a different view from the disciplinary authority and imposing the penalty of dismissal. The final conclusion on the charges was arrived at only after taking into consideration the reply to the show cause notice given by the petitioner. Therefore, the decision of the Supreme Court in Yoginath Bagde's case (supra), cannot assist the petitioner.

11. The High Court, in its final decision, considered the reply of the petitioner against the tentative decision and passed the final order on 23-10-1998, recommending compulsory retirement of the delinquent from service, on the basis of which the impugned notification came to be passed. It was held by the High Court that the charges levelled against the delinquent were proved and that "by implication, the delinquent was guilty of corrupt practice as well as of dereliction of duty while discharging judicial functions and had acted in a manner unbecoming of a judicial officer".

11.1 The reasons given by the High Court for its decision can be summarised as under :

(a) The delinquent should have taken into consideration the averments in the complaint that 45 tins of edible oil in respect of which robbery was alleged was stored in the godown of Civil Supplies Department, at Chotila, and that, after committing robbery, no one would store articles in the godown of Civil Supplies Department, at Chotila.

(b) The panchnama prepared by the police sub-inspector was not taken into consideration by the delinquent. It would have shown that the said goods were stored in the godown of Civil Supplies Department.

(c) The delinquent had passed the order on the application for release of muddamal directing the investigating officer to submit the report and had posted the case for hearing on October 29, 1982, which was adjourned to 30-10-1982 when the report of P.S.I. was submitted showing that the goods which were seized by the accused No.1 were handed over to the mamlatdar after they were attached by the police. This report should have

placed the delinquent on guard before passing any order in the matter.

(d) The delinquent passed the order of release of muddamal without hearing the Assistant Public Prosecutor.

(e) The delinquent ordered the return of the truck to the complainant on the footing that the complaint was the owner of the truck, though it was never claimed by the complainant that he was owner of the truck.

(f) The delinquent did not think it proper to hear any of the officers of the Civil Supplies Department, who were arraigned as accused and were in custody of the seized goods. If they were heard, it could have been brought to the notice of the delinquent that the goods were sold to M. Ravaji & Company on or before October 2, 1982 which in turn had sold them to Shri Mahavir Oil Mills and Pankaj Oil Depot, Vadodara on October 7, 1982.

(g) Averments in the complaint indicated that the seizure was effected under the Essential commodities Act and therefore, the delinquent should have at once realised that "he has no jurisdiction worth the name in the matter", and the complainant ought to have been directed to pursue his remedy under that Act.

(h) The delinquent did not take elementary care to read the complaint, application for return of muddamal, report of the police officer and panchnama, and therefore, his submission that he made the order bonafide cannot be accepted.

(i) The plea that the delinquent had jurisdiction for release of muddamal under Section 457 deserves rejection.

(j) The delinquent had passed the order for return of muddamal though he had no jurisdiction at all in view of the provisions of the Essential Commodities Act, whereas the orders passed by M/s R.G.Chaudhary, H.M.Prajapati as well as S.B.Mehta, cannot be termed as orders passed without jurisdiction. Mr.R.G.Chaudhary, merely directed investigation under Section 156(3), whereas Mr.H.M.Prajapati had not straightaway

allowed the application for return of muddamal but called for the report of the investigation officer on October 26, 1982. It was the delinquent who recklessly, negligently and carelessly passed the order for return of muddamal seized under the Essential Commodities Act though he had no jurisdiction to do so in view of the provisions thereof and the order for release of muddamal could have been passed by a senior member of State Judiciary under the Essential Commodities Act and not a Judicial Magistrate First Class.

(k) Case of delinquent cannot be compared with the case of either Mr.R.G.Chaudhary or Mr.H.M.Prajapati or Mr.S.B.Mehta and inquiry would not stand vitiated merely because no action was taken against other judicial officers.

12. It is evident from the final order of the High Court that it did not take into consideration the material evidence on record showing that there was an injunction issued by the Civil Court to the effect that the order of seizure dated 1-10-1982 should not be acted upon and the muddamal oil should not be treated as seized and that the plaintiff should not be obstructed in dealing with the goods as if they were not seized. This fact was specifically stated in paragraph 3 of the complaint in which the interim order of the Civil Court was quoted. In paragraphs 4 and 5 of the complaint, it was stated that though the accused were informed about that order of the Civil Judge (S.D.), they had forcibly on the point of a revolver committed robbery and were pilfering the oil from the drums and had thereby committed offences alleged. The Civil Judge (S.D.) Mr.H.M.Prajapati had made that order of interim injunction on 4-10-1982 which was on record. The delinquent had pleaded in reply to his chargesheet that he had known while inquiring under Section 457 of the Code that the complainant had lodged civil suit in the Court of the Civil Judge (S.D.) Jamnagar for injunction and that the Court had granted injunction. Though this contention raised in the reply was briefly noted in the final order, it was not at all dealt with by the High Court.

12.1 The High Court noted the argument on behalf of the delinquent that no action should be taken against the delinquent in view of the delay caused in holding the inquiry, but did not deal with that aspect at all in its reasoning.

12.2 Mr.Justice N.J.Pandya had set aside the orders made in Misc. Criminal Application No.97 of 1982 and quashed the complaint itself on 5-2-1990 and made a Note on 13-12-1990 suggesting initiation of departmental proceedings "against the erring Magistrate Shri S.B.Mehta" who had treated the grievance of non-return of muddamal made by the complainant as a complaint under Section 195 of the Code and had issued a bailable warrant on the godown keeper and process on the accused persons. The High Court did not at all deal with the contention of delay in initiating the proceedings against the delinquent nor did it consider the importance of the "Note" made by Justice N.J.Pandya in which it was the senior Magistrate Mr.S.B.Mehta who was described as the "erring Magistrate", because, he had forced the return of muddamal by issuing a bailable warrant on an application made by the complainant, on the ground that the order made by the delinquent below exh.5 on 30-10-1982 for release of the muddamal was not being complied with. If we examine the order made by Mr.S.B.Mehta on 6-11-1982, it becomes clear that the said senior Magistrate was fully conversant with the nature of the complaint, the police report, and the order made by the delinquent probationer on 30-10-1982 under section 457 of the Code, when he issued the coercive process against the godown keeper and others for non-compliance of the said release order. We re-produce hereunder the order dated 6-11-1982 passed by the Judicial Magistrate Mr.S.B.Mehta, in the context of which, Justice N.J.Pandya had observed that, "eventually, the muddamal did come to be returned to the original complainant".

"ORDER BELOW COMPLAINT.

Heard Mr.V.K.Vaghela, L.A. for the applicant i.e. original complainant.

On inquiry as well as on perusal of the original complaint, it appears that the complainant prayed for muddamal. The said application was referred to Police Sub Inspector, who in turn submitted his report stating that department was not in any further need of muddamal. Hence, an order under section 457 Cr.P.C. was passed for delivery of the same to the present complainant on furnishing bail for the amount mentioned thereunder. Thereafter, the complainant proceeded to accused and concerned officers with the order of this court after getting the delivery of muddamal. I

have carefully studied, the reports of the officers. Considering these reports as well as the whole proceedings of the case, it is crystal clear that all these officers accused have deliberately and intentionally disobeyed the order of this Court under various pretexts. This is flagrant violation of clear order of this Court. Every citizen is expected to obey more from the public servants. It would be in the interest of justice to treat this application as complaint within the meaning of section 195 of the Code of Cr.P. It clearly transpires that the accused persons with the aid and abetment have conspired to disobey the order of this court and have thus obstructed the process of this court. On scrutiny of the prima facie case under section 166, 186, 228 read with section 34 or 114 or 120 of IPC is apparently committed by the accused.

Mr.V.K.Vaghela, LA of the applicant original complainant urges hard that the non-bailable warrant should be issued against all the accused. I do not agree with him as the accused are not likely to run away. However, the Godown Keeper did not deliver the goods inspite of this Court's a bailable warrant would be just and proper. Summons against the rest of the accused on payment of process fees. Hence, the following order :

:: ORDER ::

The application of the applicant i.e. original complainant is treated as complaint within the meaning of Section 195 of Cr.P.C. Process in form of bailable warrant for Rs.2,000/- be issued against the godown keeper and in form of summons against rest of the accused under section 166-186-228 read with section 34/114/120 on payment of process fees returnable on 10-10-1982. Separate criminal case number be given to this complaint.

Jamnagar sd/- S.B.MEHTA
Dt. 6-11-1982 Judicial Magistrate
First Class, Jamnagar"

12.3 We are conscious of the fact that even if the Senior Magistrate Mr.S.B.Mehta, who according to Justice N.J.Pandya, was fully conversant with the nature of the

various orders made in those proceedings, and was the "erring Magistrate", was not proceeded against despite the strong suggestion made by the learned Single Judge in his "Note", that by itself did not absolve the petitioner, it remains a matter of great intrigue as to how Mr.S.B.Mehta got insulated and all attention was focused on this delinquent who was just a probationer and whose order could have been set right in the proceedings which were still pending when Mr.S.B.Mehta initiated coercive action to get that order implemented. It is difficult to comprehend with any unbiased approach as to how the order made by the senior Judicial Magistrate Mr.S.B.Mehta, directing coercive process for not handing over the muddamal after careful study of the nature of the complaint and the earlier release order made by the probationer, was found to be not objectionable by the High Court and the entire blame was beamed on the delinquent who may have made an erroneous judicial order, but was careful enough in imposing the condition of solvent surety for the full value of the muddamal oil, which as per the police report was Rs.1 lac, and a further condition of filing an undertaking to the Court that the muddamal will be produced before the Court by the complainant as and when required. We will perhaps never know the undisclosed reasons that substituted this delinquent probationer to face the departmental proceedings in place of Mr.S.B.Mehta who was spotted by Justice N.J.Pandya as the "erring Magistrate" and against whom alone the initiation of departmental proceedings was suggested in the "Note", as is clear from the last three paragraphs thereof.

12.4 In the long intervening period between the "Note" dated 13-12-1990 and the initiation of the departmental inquiry, a preliminary inquiry was held and it is on the basis of the preliminary inquiry report that the departmental proceedings came to be initiated against the delinquent instead of it being initiated against Mr.S.B.Mehta for whom it was suggested by the learned Single Judge. Therefore, the question arises as to what material aspects were taken into account for this shift and what were the reasons for absolving Mr.S.B.Mehta and merely concentrating on the initial release order made by the probationer delinquent under Section 457 of the Code after the Judicial Magistrate senior to him Mr.R.G.Chaudhary had earlier directed investigation on the complaint on 19-10-1982 and another Senior Division Judge Mr.H.M.Prajapati had granted an injunction against the accused persons for not treating the muddamal goods as seized by his order made on 4-10-1982. With respect, we are unable to uphold the stand of the High Court that

the orders of Judicial Officers who directed the investigation under Section 156(3) of the Code, issued injunction against the accused for treating the muddamal as if it was not seized, and the crucial coercive order made for enforcing the release of muddamal, by the Judicial Officers' Mr.R.G.Chaudhary, Mr.H.M. Prajapati and Mr.S.B.Mehta, who were all experienced senior officers, could be viewed as orders validly made in exercise of their jurisdiction and the order of the delinquent probationer under Section 457 for return of the muddamal as being made without jurisdiction, as held by the disciplinary authority in the final order. In fact, the High Court ought to have noticed that the Supreme Court had, in State of Madhya Pradesh v. Rameshwar Rathod, reported in (1990(4) SCC 21), in the context of sections 6A and 7 of the Essential Commodities Act, 1955, held that having regard to the language used in these provisions, it must be held that criminal court's jurisdiction to entertain an application under Section 523 read with Section 516A of the Criminal Procedure Code, 1898 (corresponding to Sections 451 and 457 of the Code of Criminal Procedure, 1973) is not completely ousted.

12.5 The High Court, in its final order, held that though it was never claimed in the application by the original complainant that he was the owner of the truck, nor particulars of the truck were mentioned "the delinquent ordered return of the truck on the ground that the complainant was the owner of the truck". This finding is not at all borne out from the order passed by the delinquent on 30-10-1982 under Section 457 by which he had directed that 45 barrels of groundnut oil which were seized by the police and were at that time in the custody of the Mamlatdar, Chotila and which were not produced before him, that particular muddamal (i.e. the 45 barrels of groundnut oil) should be handed over to the complainant, on the conditions of his furnishing a solvent surety in the sum of Rs.1 lac and giving an undertaking to return the same as and when so required by the Court. This is what was stated in the said order which is in the vernacular. We fail to understand that, though there was absolutely no mention of the truck in the order passed by the delinquent, which was passed only in respect of the muddamal 45 oil barrels, on what basis the disciplinary authority i.e. the High Court, on its administrative side, held the delinquent guilty of even returning the truck to the complainant.

12.6 Though the muddamal oil barrels were seized by the police at Chotila and during the investigation under

Section 156(3) which was ordered by the Judicial Magistrate Mr.R.G.Chaudhary and were not produced before the Court, it appears from the record that the seizure report was filed on 30-10-1982 before the learned Magistrate and the delinquent had taken it into consideration while passing the order on 30-10-1982. In the said police report, the P.S.I. had reported the seizure of the muddamal stock and shown the value of the seized muddamal to be Rs.1 lac. In the order made by the delinquent, it was specifically mentioned that the delinquent had read the said police report. Despite this positive material on record, the High Court held that "the delinquent did not take even elementary care to read the complaint, application for return of muddamal, report of police officer and panchnama". The complaint was under investigation under Section 156(3) and no cognizance was yet taken, as can be seen from the order made on 5-12-1990 in Special Criminal Application No.1658 of 1982 in which the proceedings were quashed. The learned Single Judge had observed:

> "For want of details as to what was the result of the order of inquiry under Section 156(3), it is not possible to say anything definite .... if no report whatsoever is filed and the matter has been pending only for the purpose of receiving the report, in either event, it will be necessary to quash the same."

There was, therefore, no scope for the delinquent to consider the investigation report under Section 156(3).

12.7 The High Court, in its final order, did not even attempt to consider as to on what basis the emphatic suggestion made in the Note of Justice N.J.Pandya to hold an inquiry against the 'erring Magistrate" Shri S.B.Mehta, who had ordered coercive action for return of the muddamal to the complainant was bypassed and on what basis the delinquent got substituted for Mr.S.B.Mehta to face the inquiry.

12.8 The disciplinary authority did not note the material aspect that even in respect of any act done or purported to be done by a government officer in his official capacity under the Essential Commodities Act or any order made thereunder, the Civil Court had jurisdiction to grant injunction under section 12-B of the Act after notice of application of injunction or other relief was given to such government officer. In

the present case, as noted above, there was a clear reference to the injunction order in respect of the muddamal oil barrels for not treating them as seized and restraining the accused persons from allowing them to be dealt with as if not seized. The relevant background in which the order under Section 457 of the Cr.P.C. was made by the delinquent probationer was, therefore, lost sight of while casting sole condemnation on him. There is an uneasy feeling from the record and the non-consideration of the material aspects that the delinquent was made a scapegoat as an outcome of the preliminary inquiry report which never was disclosed and of which the Registrar of the High Court in his letter dated 22-11-1996 incorrectly denied existence.

12.9 There is no immunity to any officials from the law when offences are alleged to have been committed by them. It would be a dangerous proposition that no complaint alleging offences against the government officers should be entertained. When there is an accusation against an official of illegal tampering or of misappropriation or conversion of the goods seized, such acts are not in exercise or discharge of their duties. The Supreme Court in B. Saha v. M.S.Kochar, reported in (1979)4 SCC 177, has held, in the context of the provisions of Section 197 of the Code of Criminal Procedure, that although the seizure of the imported goods by the customs officials and their being thus entrusted with the goods, having domain over them, was an act committed by them while acting in the discharge of their official duty, there was nothing in the nature or quality of the complained subsequent acts of dishonest misappropriation or conversion of goods by them which attached or partook of the official character. In that case, the complainant had alleged that the customs officers by their act in illegally tampering and breaking the seals of the goods seized by them and removing some of those goods and further abusing their position and seizing some of the personal articles of the complainant under the colour of search warrant and illegally holding those goods, had committed offences under Sections 120-B, 166, 409 IPC. The Supreme Court held that the alleged act of misappropriation or conversion could not reasonably be said to be imbued with the colour of the office held by the appellants-customs officers. Generally, in the case under section 409 of the IPC, the official capacity is material only in connection with the "entrustment" and does not necessarily enter into the later act of misappropriation or conversion, which was the act complained of. Even in the present case, the complainant had made serious allegations of the Civil

Supply Officers abusing their position and at a gun point, removing goods and pilfering oil from the barrels. This is why the Magistrate Mr.R.G.Chaudhary had directed on 19-10-1982 investigation under Section 156(3) of the Code. It was during that inquiry that the muddamal was seized by the police and therefore, the complainant filed the application exh.5 for return of the muddamal under Section 457, since it was not produced before the Court, pointing out that the 45 oil barrels were seized by the police and praying that, in view of the decaying nature of the commodity, the goods be returned to the complainant. It was already stated in the complaint that the Civil Court had granted interim injunction restraining the accused persons from treating the muddamal goods as seized and from preventing the complainant from dealing with the goods. In this background, by order made on 26-10-1982 on exh.5, by the Magistrate Mr.H.M.Prajapati, the police report was called and the delinquent made the order under Section 457 of the Code in which he considered the contentions raised on behalf of the complainant that the muddamal of seized 45 barrels of groundnut oil was lying in the godown of the Civil Supplies Department, at Chhotila, that it was seized twenty days back, and that, the muddamal was likely to decay. He also considered the police report which was called for by the order dated 26-10-1982 passed by Mr.H.M.Prajapati in which report the fact that the muddamal oil barrels were seized by the police in connection with the offences under Sections 166, 390, 391, 34, 114 of the IPC alleged in M.C.No.76 of 1982 and the value of the muddamal of Rs.1 lac, were specifically mentioned. Therefore, the delinquent probationer, who admittedly, had put in hardly ten months of service, exercising his power under Section 457 of the Code, which he could have exercised on the ratio of the decision of the Supreme court in Rameshwar Rathod (supra) that, having regard to the language used in Sections 6A and 7 of the Essential Commodities act, 1955, the Criminal Courts' jurisdiction to entertain such application was not completely ousted, ordered the return of the muddamal by taking the precaution of imposing two vital conditions of furnishing a solvent security for the entire value of the muddamal oil of Rs.1 lac as shown in the police report and taking an undertaking from the complainant to return the goods as and when required by the Court. This was purely a judicial order and if found erroneous, could have been judicially rectified and did not warrant any inference that, "by implication the delinquent was guilty of corrupt practice, as well as of dereliction of duty while discharging judicial functions and had acted in a manner unbecoming of a judicial officer", as drawn by the

disciplinary authority.

12.10 There is not even an iota of evidence on record to show that the delinquent probationer was actuated by any oblique motive. The muddamal goods being edible oil were of perishable nature and since they were lying in a seized condition for nearly one month on the date when the order was made by the delinquent, it cannot be said that this judicial officer acted in dereliction of his duties while exercising his judicial function of ordering the return of muddamal oil barrels on just and proper conditions. The fact that he ought to have made more elaborate inquiry or that a different view could be judicially taken did not make his order reckless or negligently made. On the basis of the material on record, it was unreasonable and unjust to find the delinquent guilty merely on surmises, conjectures and unwarranted inferences which have been unfortunately resorted to in the present case.

12.11 As held by the Supreme Court in P.C.Joshi v. State of U.P., reported in AIR 2001 SC 2788, the fact that there was possibility on a given set of facts to arrive at different conclusion was not a ground to indict a judicial officer for taking one view and to allege misconduct for that reason alone. Even if the view taken by the delinquent officer was not proper or correct, that was no ground for attributing any motive to him for making such a judicial order. The Supreme Court in Ishwar Chand Jain v. High Court of Punjab, reported in AIR 1988 SC 1395, held that, while considering the complaint of irregularity against the judicial officer on probation, the High Court should have kept in mind that the incidents which were subject matter of inquiry related to the very first year of officer's service. Every judicial officer is likely to commit mistake of some kind or the other in passing orders in the initial stage of his service which a mature judicial officer would not do. However, if the orders are passed without there being any corrupt motive, the same should be overlooked by the High Court and proper guidance should be provided to him. If after warning and guidance, the officer on probation is not able to improve, his services should be terminated.

12.12 The following observations made by the Apex Court in K.P.Tiwari v. State of Madhya Pradesh, reported in AIR 1994 SC 1031, may pertinently be recalled:

"It should be remembered that the lower judicial officers mostly work under a charged atmosphere

> and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks more correctly upto their nostrils. They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however gross it may look, should not, therefore, be attributed to improper motive. It is impossible that a particular judicial officer may be consistently passing orders creating suspicion of judicial conduct which is not wholly or even partly attributable to innocent functioning. Even in such case, the proper course for the higher court to adopt is to make note of his conduct in the confidential record of his work and to use it on proper occasions. The judges in the higher courts have also a duty to ensure judicial discipline and respect for the judiciary from all concerned. The respect for the judiciary is not enhanced when judges at the lower level are criticized intemperately castigated publicly, no greater damage and (sic) be done to the administration of justice and to the confidence of people in the judiciary can (sic) when the judges of the higher courts publicly express lack of faith in the subordinate judges for one reason or the other."

Final Order :

13. For the foregoing reasons, we hold that, in the facts of the present case, there was absolutely no justification for holding the delinquent guilty of the charges levelled against him. The impugned order of compulsory retirement of the petitioner is, therefore, hereby set aside. The petitioner is ordered to be reinstated forthwith with all consequential benefits. Rule is made absolute accordingly with no order as to costs.

[R.K.ABICHANDANI, J.]

[D.H.WAGHELA, J.]

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